

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

2010 MAY 26 A 11:50

DOCKET CONTROL

In the matter of:

La Bella Investments, LLC, an Arizona limited liability company;

James Mitchell and Deseree T Mitchell, husband and wife,

Respondents.

DOCKET NO. S-20745A-10-0215

TEMPORARY ORDER TO CEASE AND DESIST AND NOTICE OF OPPORTUNITY FOR HEARING

NOTICE: THIS ORDER IS EFFECTIVE IMMEDIATELY

EACH RESPONDENT HAS 20 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that Respondents La Bella Investments, LLC and James Mitchell, are engaging in or are about to engage in acts and practices that constitute violations of A.R.S. § 44-1801, *et seq.*, the Arizona Securities Act ("Securities Act"), and that the public welfare requires immediate action.

I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.

RESPONDENTS

2. La Bella Investments, LLC ("LBI") was organized in Arizona on August 26, 2005. LBI's principal place of business is Scottsdale, Arizona.

1 3. James Mitchell ("Mitchell") is a managing member of LBI.

2 4. Mitchell is an individual residing in Maricopa County, Arizona.

3 5. LBI and Mitchell may be referred to collectively as "Respondents."

4 6. Deseree T Mitchell ("D. Mitchell") has been at all relevant times the spouse of
5 Respondent Mitchell. D. Mitchell may be referred to as "Respondent Spouse." Respondent Spouse
6 is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of
7 the marital community.

8 7. At all relevant times, Respondent Mitchell has been acting for his own benefit and
9 for the benefit or in furtherance of the marital community.

10 **III.**

11 **FACTS**

12 8. On or about May 3, 2010, Mitchell posted an investment opportunity on the Internet
13 through phoenix.craigslist.org available for all internet users to view without password protection.
14 The craigslist.org advertisement was posted to the Phoenix, Arizona section of the website and it
15 included the following statements:

16 a) "I am looking for investors in legalized medicinal grow sites in Colorado and
17 California, for more information please contact me by replying here.

18 James"

19 9. An Arizona resident contacted Mitchell as a result of the advertisement to learn
20 more about the investment opportunity.

21 10. On or about May 6, 2010, Mitchell, individually and/or on behalf of LBI, responded
22 by electronic mail and transmitted a document titled "Hydro Info" that described the investment
23 opportunity to the Arizona resident. The document contained the following statements:

24 a) "We are currently growing in Colorado which was legalized in 2002 [...].
25 Obama said when he came in office that they would not prosecute medicinal growers in states that
26 legalized."

1 b) “Colorado has over 400 dispensaries and not enough products to sell; we are
2 not opening dispensaries we are only growing for them.”

3 c) “We will grow 96 plants per location which is in the guidelines of the State
4 of Colorado.”

5 d) “The setup cost is roughly 25,000.00 per location for 96 plants, the first crop
6 takes roughly 14 weeks and will gross between 22,500.00 and 30,000.00 depending on market
7 value at the time.”

8 e) “Our goal is to prepare for the legalization in Arizona in November in which
9 we will be opening dozens of locations as growers and several dispensaries.”

10 11. The investor has two options to secure a return. The Investor can either receive a
11 32.5% share of the profits from the 96 plant operation or can make a flat return and “... receive
12 their initial investment plus 10,000.00 after the first grow is completed and sold, estimated time is
13 3.5 to 4 months.”

14 12. Mitchell would receive a 32.5% share of the profits and his distributor would
15 receive the remaining percentage.

16 13. An investor would not take any actions to manage the investment, other than
17 contributing money to Respondents. Mitchell stated, “as an investor your participation is just the
18 initial set up costs.”

19 14. Mitchell stated that, “we handle everything from setup to selling and disbursing
20 funds through a paymaster which can be an attorney.”

21 15. Mitchell stated that the amount of investment was “anywhere from 25,000 to
22 100,000 depending on the size of the crop.”

23 16. Mitchell stated that the Arizona resident could meet him in Phoenix or Denver to
24 view the grow site prior to investing.

25 17. In an October 19, 2009, United States Department of Justice (“DOJ”) Memorandum
26 to United States Attorneys, the DOJ stated that, “prosecution of commercial enterprises that

1 unlawfully market and sell marijuana for profit continues to be an enforcement priority of the
2 Department.”

3 18. Respondents failed to state a material fact, that the DOJ’s official policy is to
4 prosecute commercial growers of marijuana and regulate drugs through the Controlled Substances
5 Act (“CSA”), 21 U.S.C. § 801, *et. seq.*, which allows for federal prosecution of traffickers of
6 marijuana that can include medicinal growers in states that legalized medical marijuana.

7 19. At all times relevant, neither Mitchell nor LBI were registered as a salesman or
8 dealer.

9 20. As of May 24, 2010, the Craigslist.org posting is still available for viewing at
10 <http://phoenix.craigslist.org/evl/biz/1723146195.html>.

11 **IV.**

12 **VIOLATION OF A.R.S. § 44-1841**

13 **(Offer and Sale of Unregistered Securities)**

14 21. From on or about May 2010, Respondents have been offering or selling securities in
15 the form of investment contracts, within or from Arizona.

16 22. The securities referred to above are not registered pursuant to Articles 6 or 7 of the
17 Securities Act.

18 23. This conduct violates A.R.S. § 44-1841.

19 **V.**

20 **VIOLATION OF A.R.S. § 44-1842**

21 **(Transactions by Unregistered Dealers or Salesmen)**

22 24. Respondents are offering or selling securities within or from Arizona while not
23 registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

24 25. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

26. In connection with the offer or sale of securities within or from Arizona, Respondents are, directly or indirectly: (i) employing a device, scheme, or artifice to defraud; (ii) making untrue statements of material fact or omitting to state material facts that are necessary in order to make the statements made not misleading in light of the circumstances under which they are made; or (iii) engaging in transactions, practices, or courses of business that operate or would operate as a fraud or deceit upon offerees and investors. Respondents' conduct includes, but is not limited to, the following:

a) Failed to state a material fact, that the DOJ's official policy is to prosecute commercial growers of marijuana and regulate drugs through the Controlled Substances Act ("CSA"), 21 U.S.C. § 801, *et. seq.*, which allows for federal prosecution of traffickers of marijuana that can include medicinal growers in states that legalized medical marijuana.

27. This conduct violates A.R.S. § 44-1991.

VII.

TEMPORARY ORDER

Cease and Desist from Violating the Securities Act

THEREFORE, based on the above allegations, and because the Commission has determined that the public welfare requires immediate action,

IT IS ORDERED, pursuant to A.R.S. § 44-1972(C) and A.A.C. R14-4-307, that Respondents, their agents, servants, employees, successors, assigns, and those persons in active concert or participation with Respondents CEASE AND DESIST from any violations of the Securities Act.

IT IS FURTHER ORDERED that this Temporary Order to Cease and Desist shall remain in effect for 180 days unless sooner vacated, modified, or made permanent by the Commission.

1 IT IS FURTHER ORDERED that this Order shall be effective immediately.

2 **VIII.**

3 **REQUESTED RELIEF**

4 The Division requests that the Commission grant the following relief:

- 5 1. Order Respondents to permanently cease and desist from violating the Securities
6 Act, pursuant to A.R.S. §44-2032;
- 7 2. Order Respondents to take affirmative action to correct the conditions resulting from
8 Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to
9 A.R.S. §44-2032;
- 10 3. Order Respondents to pay the state of Arizona administrative penalties of up to five
11 thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;
- 12 4. Order that the marital community of Respondent Mitchell and Respondent Spouse be
13 subject to any order of restitution, rescission, administrative penalty, or other appropriate affirmative
14 action pursuant to A.R.S. § 25-215; and
- 15 5. Order any other relief that the Commission deems appropriate.

16 **IX.**

17 **HEARING OPPORTUNITY**

18 Each respondent, including Respondent Spouse, may request a hearing pursuant to A.R.S.
19 § 44-1972 and A.A.C. Rule 14-4-307. **If a Respondent or Respondent Spouse requests a**
20 **hearing, the requesting respondent must also answer this Temporary Order and Notice.** A
21 request for hearing must be in writing and received by the Commission within 20 days after service
22 of this Temporary Order and Notice. The requesting respondent must deliver or mail the request for
23 hearing to Docket Control, Arizona Corporation Commission, 1200 West Washington, Phoenix,
24 Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477
25 or on the Commission's Internet web site at www.azcc.gov/divisions/hearings/docket.asp.
26

1 If a request for hearing is timely made, the Commission shall schedule a hearing to begin 10
2 to 30 days from the receipt of the request unless otherwise provided by law, stipulated by the parties,
3 or ordered by the Commission. **Unless otherwise ordered by the Commission, this Temporary**
4 **Order shall remain effective from the date a hearing is requested until a decision is entered.**
5 After a hearing, the Commission may vacate, modify, or make permanent this Temporary Order,
6 with written findings of fact and conclusions of law. A permanent Order may include ordering
7 restitution, assessing administrative penalties, or other action.

8 If a request for hearing is not timely made, the Division will request that the Commission
9 make permanent this Temporary Order, with written findings of fact and conclusions of law, which
10 may include ordering restitution, assessing administrative penalties, or other relief.

11 Persons with a disability may request a reasonable accommodation such as a sign language
12 interpreter, as well as request this document in an alternative format, by contacting Shaylin A.
13 Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail sabernal@azcc.gov.
14 Requests should be made as early as possible to allow time to arrange the accommodation.

15 X.

16 ANSWER REQUIREMENT

17 Pursuant to A.A.C. R14-4-305, if a Respondent or Respondent Spouse requests a hearing,
18 the requesting respondent must deliver or mail an Answer to this Temporary Order and Notice to
19 Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona
20 85007, within 30 calendar days after the date of service of this Temporary Order and Notice.
21 Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the
22 Commission's Internet web site at www.azcc.gov/divisions/hearings/docket.asp.

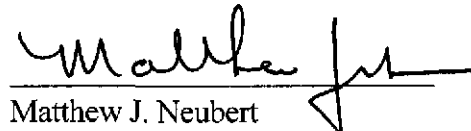
23 Additionally, the answering respondent must serve the Answer upon the Division.
24 Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-
25 delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix,
26 Arizona, 85007, addressed to Phong (Paul) Huynh.

1 The Answer shall contain an admission or denial of each allegation in this Temporary
2 Order and Notice and the original signature of the answering respondent or the respondent's
3 attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial
4 of an allegation. An allegation not denied shall be considered admitted.

5 When the answering respondent intends in good faith to deny only a part or a qualification
6 of an allegation, the respondent shall specify that part or qualification of the allegation and shall
7 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

8 The officer presiding over the hearing may grant relief from the requirement to file an
9 Answer for good cause shown.

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION, this 26 day of
11 May, 2010.

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14 Matthew J. Neubert
15 Director of Securities
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